

Appl. No. 10/702,193
Docket No. P123C
Amdt. dated October 18, 2007
Reply to Office Action mailed on May 18, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 19 are pending in the present application. No additional claims fee is believed to be due. Claims 1 – 19 have been rejected under 35 U.S.C. § 103.

Double Patenting

Claims 1 – 19 have been rejected under the judicially created doctrine of nonstatutory obviousness-type double patenting of the claim 1 – 52 of US Patent No. 6,737,078. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the Claim, a terminal disclaimer in accordance with 37 CFR § 1.321(c) is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Reinhart in view of Arav and Nawar or DE '354

Claims 1 – 19 have been rejected under 35 U.S.C § 103 as being obvious over Reinhart (EP 0678 247) in view of Arav et al. (WO 99/66877) ("Arav") and Nawar (US Patent No. 6,641,847) or DE 4042354 ("DE '354"). Applicants respectfully traverse this rejection.

Reinhart is directed to "[a] pet food product is provided for use in reducing inflammatory and allergic skin responses. The pet food composition contains omega-6 and omega-3 fatty acids and the ratio of the omega-6 fatty acids to the omega-3 fatty acids is from 3:1 to 10:1." *Abstract*. Arav is directed to: "a dietary supplement to increase fertility in an animal, the supplement comprising a ω -3 fatty acid-containing component." *Abstract*. Nawar is directed to "[i]solated cranberry seed oil and components thereof, in a form suitable for use as a foodstuff, dietary supplement, or pharmaceutical composition, are disclosed." *Abstract*. DE '354 is directed to "[p]elleted

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fodder material for general use as an animal feed and especially as dog food is made from the additive free residue from cold pressed linseed seeds." *Abstract.*

While the Office Action discusses Reinhart, Nawar and DE '354, the Office Action is silent with regards to Arav. As no discussion is provided by the Office Action with regards to Arav, there is no discussion provided as to a combination of Reinhart, Nawar, and DE '354 with Arav. The Office Action does, however, discuss Stitt (US Patent No 5,110,592) in combination with Reinhart, Nawar and DE '354. Stitt is directed to "[a] method for increasing the number of live births to a female animal by feeding the female animal beginning at least one week before the expected time of birth of the female animal's offspring, an edible flaxseed composition comprising ground flaxseed." *Abstract.*

The Office Action states that Reinhart teaches a pet food product comprising omega-6 and omega-3 fatty acids in ratios of from 3:1 to 10:1, fiber, minerals, carbohydrates, 30 – 34% protein, and 20 – 23% fat, used to "treat" and maintain animals such as dogs and cats. The Examiner also acknowledges that Reinhart is silent as to using such a composition for enhancing or promoting reproductive performance. The Examiner asserts that Stitt teaches an animal blend comprising fatty acids to increase live births and improve fertility of animals. The Examiner also acknowledges that Stitt does not explicitly teach the present of omega-6 fatty acid. With regards to Nawar, the Examiner asserts that Nawar teaches foodstuff comprising omega-6 (linoleic acid), which promotes reproduction, overall growth, healthy skin and cardiovascular health. With regards to DE '354, the Examiner asserts that DE '354 teaches animal feed comprising linoleic acid wherein the feed promotes fertility, improves performance, and glossy coat.

As the Examiner notes, Reinhart does not provide any teaching of the use of fatty acids for anything with respect to reproduction. Reinhart only teaches using fatty acids in reducing allergic and inflammatory response in order to improve skin appearance. Thus, there can be no expectation of success for using fatty acids to enhance reproductive performance found in Reinhart. Stitt fails to remedy the deficiencies of Reinhart. Stitt only discloses the use of omega-3 fatty acids, and teaches nothing with respect to use of omega-6 fatty acids for any purpose. Stitt discloses only omega-3 fatty acids derived from flaxseed, and their use in increasing the number of live births to a female animal, the only example of which, with respect to Stitt, is swine. Thus, Stitt provides no teaching of

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a combination of omega-3 and omega-6 fatty acids in any animal for any purpose. Nawar provides a simple statement, as cited by the Examiner, that "these fatty acids have also been associated with various health benefits relating to overall growth, healthy skin, reproduction, and cardiovascular health." Col. 8, lines 37 - 40. Nawar, however, provides no teaching as to any particular ratio of omega-6 to omega-3 or any significance that a ratio may have on an animal's reproductive performance. DE '354 teaches that a composition comprising, among other ingredients, 17% linoleic acid and 50% linolenic acid can promote fertility.

Reinhart, Stitt, Nawar and DE '354, either alone or in combination, all fail to teach any significance to providing a diet having a specific ratio of omega-6 and omega-3 fatty acids on a companion animal's reproductive performance. There is nothing in Reinhart, Stitt, Nawar and DE '354, either alone or in combination, to teach a process for enhancing reproductive performance in a companion animal that involves feeding the animal a diet including omega-6 and omega-3 fatty acids, wherein the ratio of the omega-6 fatty acids to the omega-3 fatty acids is from about 3.5:1 to 12.5:1; or processes for maintaining maternal essential fatty acid status in a companion animal; for maintaining litter size through subsequent parities of a companion animal; for increasing live births through subsequent parities of a companion animal; or for decreasing still births through subsequent parities of a companion animal, all of which employ such a diet.

The mere assertion that some fatty acids can be used to treat various disorders does not supply the requisite teaching or motivation to use particular fatty acids in particular combinations or ratios to improve reproductive performance in animals. Thus, there is no expectation of success found in the combination of Reinhart, Stitt, Nawar and DE '354 for using omega-6 and omega-3 fatty acids in a particular ratio to enhance reproductive performance.

Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In

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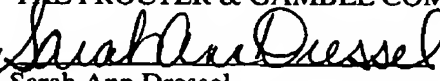
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view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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